POSITION OF WOMEN

C. G. 562 The position of women in the Caucasus was in many respects subordinate to that of men: male children were preferred, descent was patrilineal, residence patrilocal, women were excluded from inheritance rights; in case the headwoman was unable to reconcile a quarrel among the female members of the family, the case was put before the headman; divorces C G were in general more easily obtained by men than by women, and in the case of adultery the [684] husband had the right to kill or disfigure his wife. The Circassian code of behavior forbade women to sit down while men were standing, and the husband was addressed in terms of re- C G spect by his wife. In most areas the women [462] led a life of hard work; besides doing the housework, they also assisted in the work in the field, though certain activities such as tending horses and in most cases ploughing were performed by men only. Among the Georgian mountaineers, women were regarded from a religious point of view as unclean, and were forbidden to enter the walled precincts C. C. of the sanctuaries; the Svan had sexual avoid- [834] ance rules to ensure success in hunting expeditions; in Mingrelia a woman may not kill a chicken or animal she is going to prepare, as this would spoil the food.

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The SOUTHERN CAUCASIANS. According to Eristov, about a century ago, bride capture was almost an every day affair in Khevsuria. In 1855 he wrote: "Bride-stealing is very common among these primitive people. You are not regarded as brave unless you steal the girl you are fond of, and she must, of course, come from a good family. Such an action will infallibly cause terrible quarrels, murders and feuds."[70] The Pshavs formerly resorted to bride capture too, but only rarely.[71] Dubrovin believes, however, that abduction occured frequently among the Pshavs and Tushi,[72] while Hahn claims the same in regard to the Ingiloi.[73] 583

For some reason or other, the collections of OSSETINE *adats* claim that abduction has either been always foreign and unknown in Ossetia or that it has disappeared leaving not a trace behind. Kovalevskij rightly criticizes Leontovič's collection, for even during Kovalevkij's time one could come across occasional instances of genuine bride-stealing.[74] Other explorers of the late 19th and early 20th century (e. g., Karginov, Baddeley, Pfaf, Šanaev) leave no doubt about the existence of actual kidnapping in Ossetia.[75] Finally, if bride-stealing were unknown in Ossetia, why would special legislation against bride-stealing be necessary as late as 1911? The inhabitants of Mizur, Sadon, Dagom, Arkhon and Nuzal had to promise not to kidnap or cooperate in abducting women, under the penalty of Rs. 300, not including the bride-price which the offended family had the right to set as high as they wished.[76] [584]

[70] Eristov, *op. cit.*, p. 113; Seidlitz "Gemeinde- und Familienleben der Chewsuren," *Ausland*, (1891), No. 16, p. 328.

[71] S. I. Makalatija, "Iz starogo narodnogo byta Pšavov," SE, 1938, No. 1, p. 102.

[72] *Istorija*, I, i, p. 310.

[73] "Putešestvie v Kachetiju i Dagestan," SMOMPK., XXXI (1902), No. 2, p. 60.

[74] *Coutume contemp.*, p. 167.

[75] S. Karginov, "Krovavaja mest' u osetin," SMOMPK, XLIV (1913), pp. 209 f. Baddeley, *op. cit.*, I, pp. 75, 265; II, p. 124.

V. Pfaf, "Narodnoe pravo osetin," Sbornik Svědenij o Kavkazě, I (1871).

D. Šanaev, "Svad'ba u severnych Osetin," SSKG, IV (1870), pp. 1—30.

[76] *Tiflisskij Listok*, July 17, 1911, cited by Dirr, AGKB, p. 115.

Chapter XII

Sexual Offenses

§ 1. CRIMES AND PENALTIES

684 628 The ancient customary law of the NORTHWESTERN CAUCASIANS imposes a death penalty on the adulteress, allowing the adulterer to go unpunished. According to Cherkess *adats* she might be killed in the act or anytime afterwards,[1] while the male partner had always to be spared. It is true, Leontovič's excellent collection of customary laws maintains the very contrary, expressly stating that the adulterer had to be punished too,[2] but the penalty imposed on him is doubtless an Islamic innovation.[3]

[585] According to ancient customary law, the lot of the unfortunate bride found unchaste on her wedding night did not differ from that of the adulteress caught in the act. If the bride did not pass the virginity test, the angry groom would at once dismiss her, hand her over to her disgraced and furious father to be mutilated and finally killed.[4]

[836] In case of pregnancy before marriage, the penalty imposed on the lover was somewhat less than the equivalent of bloodwite,[5] about twenty-five head of cattle, as Longworth found it in the beginning of the last century.[6]

Customary law hardly distinguishes between rape and abduction, although the collections do, for rape generally has the same purpose as bride capture. Rape is severely punished, as severely as murder. If the ravisher's life has been spared, he is obliged to pay as much as Rs. 150 in reparation for the insult suffered by the victim's sib, and besides this fine, he is forced to pay the usual *kalym*. He is also forced to marry the girl, for, generally, once raped, she has no hope of finding another mate. If the victim happens to be of a higher social class than the attacker, there is no reconciliation possible. Vengeance alone can atone for such a hideous crime.[7]

Incest is considered a qualified crime and is sanctioned by the severest penalties. Formerly if a Cherkess dared to marry a girl of his fraternity (*tleush*)[8]

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[1] Dubrovin, *Istorija*, I, i, p. 171.

[2] Leontovič, I, p. 234, § 109: "Imějuščij ženu i uličennyj v preljubodějanii, po zakonu lišaetsja žizni, no tot že porupok, soverkennyj cholopom, podvergaet ego nakazaniju sta udarami; èto nazyvaetsja chod-tazir."

[3] Dirr, AGKB, p. 82.

[4] Byhan, *La civilisation caucasienne*, p. 155.

[5] Post, *Grundriß der ethnol. Jurispr.*, II, p. 378.

[6] *A Year among the Circassians*, I, p. 217.

[7] Grabovskij, "Očerk suda i ugolovnych prestuplenij v Kabardinskom okruge," SSKG, IV (1870), pp. 42 f.

[8] *Supra*, p. 55.

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he would be sentenced to death by drowning. In the nineteenth century a heavy fine of 200 oxen and immediate separation were insisted upon instead.[9]

The penalty for raping a boy before puberty is death. Of course, such cases of perversion are very rare.[10] Likewise extremely rare are cases of homosexuality and bestiality,[11] except among certain Cherkess horse-breeders among whom bestiality is more common and the penalty trivial or none at all.[12]

The *adats* have evidently gone through a distinct evolution, from unusual severity imposed exclusively on the adulteress to a more moderate form of punishment affecting both partners. Dubois de Montpéreux observed how a husband, who would clip his wife's hair for adultery, then cut off her ear, arm, or nose and finally kill her, fully in accord with ancient *adats*,[13] would thereby become a blood-enemy of his wife's relatives. He therefore usually preferred to divorce her instead[14] and have the *kalym* refunded.[15] Vasil'kov reported in the beginning of this century that among the Temirgoi illicit intercourse was extremely rare and that *both* partners would be punished very severely. If caught in the act, they would be buried up to their necks and then stoned to death.[16]

The NORTHEASTERN CAUCASIANS. The Chechen customary law likewise imposes very severe penalties for adultery, as the following table clearly shows (Table No. 19).

The most serious sex offenses are those of rape and incest. If an Ingush woman (married or single) is raped, the attacker may be killed on the spot. If he manages to escape, a bitter blood-feud breaks out between the sibs of the offended and offender. In *adat* courts confession of the culprit or the accusation of the victim are considered undeniable evidence. The accused can prove himself not guilty by taking an oath, which must then be confirmed by the statements of five conjurors,[17] two of whom must be relatives. If the defendant hesitates to take the oath or fails to find sufficient conjurors who are convinced of his innocence (and hence who are not afraid of the supernatural sanction attached to such an oath), he must pay a fine of 24 cows if the victim happened to be a married woman,[18] and a horse worth 30 silver rubles, a ram and four kettles of *arrack* if she happened to be unmarried.[19] The ravisher, as usual, must marry the girl he attacked.[20] If the girl has already been engaged to someone,

[9] McLennan, *Studies in Ancient History*, p. 76.
[10] At least in Kabardia, according to Grabovskij, *op. cit.*, p. 43.
[11] *ibid.*
[12] Grabovskij, *op. cit.*, p. 44.
[13] Amputation of the adulteress' ears and nose is a punishment found throughout the Caucasus; today, of course, it is rare. It is indeed interesting to note that a Hittite code (about 1350 B. C.) engraved on a stele has been dug up, which legalized such mutilation in case of adultery (cf. H. C. E. Zacharias, *Protohistory*, p. 258).
[14] Dubois de Montpéreux, *Voyage autour du Caucase*, I, p. 132.
[15] Dubrovin, *l. c.*
[16] "Očerk byta Termirgoevcev," SMOMPK, XXIX (1901), No. 1, p. 102.
[17] For the institution of *conjury* see above, pp. 155 f.
[18] Leontovič, II, p. 172, §§ 140, 142.
[19] Leontovič, II, p. 172, § 144.
[20] Leontovič, II, p. 120, § 24. Other adat collections claim the very opposite, cf. Leontovič, II, p. 172, § 147.

the *adats* give the engaged partner the right to dissolve the betrothal promises and to reclaim the *kalym* and engagement gifts.[21]

Seduction and attempted seduction are crimes almost as serious as rape and are punished accordingly.[22]

[835] The Chechens harbour an unusual abhorrence of incest. If an illegitimate child is born of an incestuous union, a heap of dirt is brought to the yard of the persons concerned, or sometimes to a public place, as a special protest of the community.[23] Generally speaking, penalties for sex offenses are inflicted on the culprit by the family, but, in the case of incest, the whole *community* protests. It is a crime that goes beyond the interests of the individual and joint-family.

A closer study of Table 19 will bring out three important facts regarding Chechen penalties for sexual offenses: (1) *both* the adulteress and adulterer are punished,[24] (2) they are killed on the spot, but the avenger thereby becomes a blood-enemy of the family of the person he kills, and (3) pardon and reconciliation are more or less the rule today, but not without heavy reparation and divorce.

TABLE 19

Penalty for Adultery according to Chechen Adats

Tribe Chechen	Penalty		Sources
	Adulteress	Adulterer	
Dzherakh and Nazranians	Recently: adulteress is divorced, must refund *kalym*, plus 48 cows to husband.	Husband may kill him in the act.	Leontovič, II, pp. 116 f, § 6; II, p. 118, § 14. Grabovskij, "Inguši," SSKG, IX (1876), pp. 53 f.
	Formerly: husband cut adulteress' nose off, divorced her, received 23 head of cattle from her family.	Might be killed in act; if escaped, had to pay 23 head of cattle to offended husband.	
Terek Chechens	Husband may not kill adulteress; may bite nose off, divorce her.	Husband may kill adulterer in act; if pardons him, husband has right to 70 head of cattle.	Leontovič, II, p. 122, § 2. Dirr, AGKB, p. 77. Leontovič, II, p. 113, § 9.
Kists	May not kill adulterous wife; may cut her nose off and divorce her; he receives 24 cows from her family.	Husband may kill adulterer in act, but obliged to pay bloodwite of 12 cows; if adulterer's sib takes vengeance on husband, must pay bloodwite of 24 cows. If adulterer escapes, he must pay husband 24 cows.	Leontovič, II, p. 120, § 23. Dirr, AGKB, p. 77. Leontovič, II, p. 113, § 9.
Salati Aukh Ichkerians	Husband may cut her nose off and divorce her. He may not kill her.		Leontovič, II, p. 139, § 63; II, p. 113, § 9. Dirr, *l. c.*

[21] Leontovič, II, p. 172, § 145.
[22] Leontovič, II, p. 173, § 149.
[23] Berže, Čečnja i Čečency, pp. 86 f.
[24] This seems to be a further evolution of the *adat* permitting the offended husband to punish his wife *with impunity*. The right to kill the adulterers most likely was not limited to the

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If we now pass on to the Lesghian peoples we shall learn that each province, [84
each district, and even each village has its own customary laws, but the differences are only accidental. Everywhere the *adats* agree at least in one point—in their severity. Death or its equivalent for any sex crime is the general rule.

To avoid useless repetitions and to facilitate comparison we present the Daghestanian *adats* in form of a table (Table 20).

Homosexual rape is doubtless a rare crime among these mountaineers, but [839]
laws referring to these offenses are a great help in interpreting the sanctions against sexual transgressions. If homosexual rape is punished as severely as natural rape, we have indubitable evidence that sexual taboos do not exist exclusively to safeguard the integrity of the hymen and to prevent bastard births, as one might perhaps be inclined to think from what we have said about virginal integrity.[23] We suspect, however, that laws regarding such rare sexual perversity as homosexuality and bestiality have not arisen from any special need for such sanctions but rather introduced through Islamic influence.[24]

The table shows that throughout Daghestan (1) the *adats* expressly appoint [696]
the nearest male relatives to punish the culprits.

(2) Adultery, fornication, rape, homosexuality—all are capital crimes, punishable with death, but admit of degrees. The most abhorred crimes are incest and rape, followed by adultery, fornication, homosexuality, and finally bestiality. "Incest" must, naturally, be understood in the Lesghian sense. We must not forget that when these *adats* were in force, the Lesghians were endogamists and that at most brother-sister and parent-child marriages were forbidden.

(3) Another remarkable agreement in the *adats* of the various Lesghian peoples is the obligation of killing *both* partners or *none* at all. If only one offender is avenged, the avenger himself becomes a blood-enemy of the relatives of the lover he happens to kill.

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husband. In the official report of May 28, 1870 we read: "May 28, a native of Netsi [in Chechnia] of this district, a boy 13 years of age, Nika-Akhma Kurban-ogdy, having caught his mother in an adulterous union with a co-villager, Suleyman Mahomed-ogdy, stabbed the adulterer, who later died from the wounds received." Cf. "Iz gorskoj kriminalistiki," SSKG, IV (1870), p. 80.

[23] *Supra*, p. 126.

[24] Islamic law goes into the smallest details and rarest forms of sexual transgressions.

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TABLE 20

Lesghian Adats regarding

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Locality		Customary penalty for adultery and fornication						
		Death Penalty Possible		Conditions for the lawful killing of offenders				
Province	Naibate or District	Male Offender	Female	Lawful Avenger*	In flagranti	Must kill both offenders or none	Other Conditions	In only one partner is killed, avenger = murderer**
Avar	Tsatanykh Naibate	+	+	Husband, father, brother, or son	+	+		+
	Bakhlukh N.	+	+	Husband, father, brother, son	+	−		
	Koisubulun N.	+	+	Husband, father, son, grandson, nephew, uncle	+	−		+ −
	Khunsakh N.	+	+	Husband, father, son, grandson, nephew, uncle	+	−		+ −
Gunib	Tilitl-Hidatl N.	+	+	Husband, father, son	+	−		+ −
	Kuyada N.	+	+	Husband, brother, son, cousin	+	−		+ −
	Tleiserukh N.	+	+	Husband, father, brother	+	+		+ −
	Andalal N.	+	+	Husband, brother, son, father	+	+		+ −
Samur		+	+	Husband, father, brother, son	−	+		+
Dargwa	Usisha District	+	+	Husband or relative	+	+		+
	Mikakhi D.	+	+	Husband or relative	+	+		+
	Hyuraki D.	+	+	Husband or relative	+	+		+
	Mugn D.	+	+	Husband or relative	−	+		+
	Akusha D.	+	+	Husband or relative	+	+		+
	Tsudakhar D.	+	+	Husband or relative	+	+		+
	Balchar D.	+	+					
	Tsumkan	+	+					
Kurin		+	+	Husband, father, brother	+	+		+ −
Kaitago-Tabassaran	Mahal Karakaitag	+	+	Husband	+	+	+	+
	North Tabassaran	+	+	Husband			+	+
	Mahal Terekeme							
	Mahal Urdzhamul						+	

* The LAWFUL AVENGER is always a relative of the *female* offender, or in the case of rape, the person attacked.

** By IF ONLY ONE PARTNER IS KILLED, AVENGER = MURDERER we mean that

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Adultery, Fornication, and Rape

Customary Penalty for Rape							Number of footnote	Sources (Adat Collections)
Natural Rape				Homosexual				
See supra, Table on abduction***	Offender may be killed	Banishment	Must pay a fine	May be killed	Banishment	Must pay fine		
+								ADOiZO, 472 f, §§ 24 f; Dirr, AGKB, 71.
+							1	ADOiZO, 455, §§ 17 f; AGKB, 70.
+							2	ADOiZO, 439, § 20; AGKB, 70.
+							2	ADOiZO, 439, § 20; AGKB, 70.
+							3	ADOiZO, 338 f, § 20; AGKB, 73.
+							4	ADOiZO, 914, § 54; 303 f, § 18, AGKB, 72 f.
+							5	ADOiZO, 391, § 19; AGKB, 72.
+							6	ADOiZO, 278, §§ 24 f; AGKB, 71.
								ADOiZO, 546 f, §§ 17—20; 530, § 15; AGKB, 74.
+				+		+	7	ADO, 16, 105.
	+	+	+	+	+	+	8	ADO, 16, 51 f.
							9	ADO, 16, 21, 91 f, 105.
				+		+	10	ADO, 16, 52, 65, 105.
	+		+	+			11	ADO, 16, 38, 105.
+	+		+	+		+	12	ADO, 16, 105, 117 f.
								ADO, 16, 65, 105; ADOiZO, 88, § 116; 121, § 82.
								ADO, 16, 65, 105; ADOiZO, 88, § 116; 121, § 82.
	+			+			13	AJuDO, 8 f.
							14	AJuDO, 43 f; ADOiZO, 575, §§ 10—13; AGKB, 75.
	+		+				15	AJuDO, 26.
							16	ADOiZO, 548, § 19; AGKB, 75.
	+						17	ADOiZO, 48.

if the husband, father, son, etc. of the woman kills only one of the offenders, he is regarded as a murderer and therefore incurs the same penalty.

*** *Supra*, p. 94, Table 12.

● 684 (1) The partner that is spared is banished for 10 years. ADOiZO, pp. 472 f, §§ 24 f.

(2) If one partner is killed, the other must at least be wounded. If one partner is totally spared, the avenger becomes a blood-enemy (*qanly*) of the relatives of the person he killed unless he can find 25 conjurors who will swear that the two were caught in the act. ADOiZO, p. 455, §§ 17 f.

(3) If the adulterer is killed while the adulteress manages to escape, the avenger becomes a *qanly* if he fails to declare his wife guilty. Cf. ADOiZO, p. 338 f, § 20.

(4) The cousin referred to in the *adat* as a lawful avenger is meant any cousin to the third degree on father's or mother's side. If a husband kills only the male partner, declaring his wife innocent, the avenger becomes a *qanly*; if he declares her guilty of adultery, he is free. Cf. ADOiZO, p. 914, § 54; 303 f, § 18; Dirr, AGKB, p. 72 f.

(5) If the avenger kills one partner, he must at least wound the other. ADOiZO, p. 391, § 19; Dirr, AGKB, p. 72.

(6) If one partner escapes, he or she, as the case may be, is fined and banished, and his (or her) property destroyed. The avenger may spare one partner if later on he can prove that *both* were guilty. ADOiZO, p. 278, §§ 24 f; Dirr, AGKB, p. 71.

(7) If both partners are spared, the adulteress becomes a blood-enemy of her husband as well as her own family. All her property goes over to her husband (ADO, pp. 16, 105), and a fine of one ox must be paid to the *dzhamat* (community). The adulterer in this case becomes a blood-enemy of the husband and of the adulteress' sib (ADO, p. 105), and just as the adulteress he too is obliged to pay a fine of one ox to the community (*ibid*). In case of fornication, the offenders are punished according to the *adats* regarding elopement (ADO, p. 105). Penalty for homosexual rape is blood-enmity and a fine of one ox to the sib of the person attacked (ADO, pp. 105 f). The other cases of rape are treated as a case of bride capture (ADO, p. 105). A woman is obliged to scream when she is attacked, otherwise she is suspected of adultery or fornication. She may free herself of this suspicion and the penalty involved by finding six male relatives who are willing to take the *khatun-talikh* (an oath, the sanction for perjury being an obligatory divorce). Attempted rape and even a "suspicious approach" is punished like actual rape (ADO, p. 105).

(8) The penalty imposed on the adulterer is the same as that imposed on a person who has raped a married woman (ADO, p. 52). In case of fornication, both partners must pay a fine of four oxen each to the community (*ibid.*).

(9) If both partners are spared, each must pay a fine of one ox to the *turgak* ("police" department) and two oxen to the community, and both are banished for a year. The offended husband has a right to divorce his adulterous wife; if he makes use of the right, the adulterer is obliged to pay an additional Rs. 100 as compensation to her husband. (Cf. ADO, pp. 16, 91 f, 105.)

(10) The adulterous woman must pay a fine of four oxen. The penalty imposed on the adulterer is the same as in rape (ADO, p. 52). Homosexual rape is punished with death (blood-enmity), and one ox must be given the relatives of the person attacked (ADO, p. 65).

(11) If the adulterer and adulteress are spared, they must each pay a fine of seven oxen to the community. If the husband uses his right to divorce his unfaithful wife, she and her lover become blood-enemies of her family (ADO, pp. 16, 38, 105). In case of fornication, the man must marry the girl, otherwise he will become a *qanly* of her sib (ADO, p. 38). Anyone who rapes a woman is obliged to give one ox to the relatives of the victim and pay a fine of seven oxen to the community, besides incurring blood-enmity (ADO, p. 38).

(12) If the avenger did not catch the two offenders in the act, one eye-witness is sufficient to inflict the same penalty as for elopement; both must pay a fine of two oxen to the community and seven kettles each worth Rs. 2 to the *turgak* (ADO, pp. 16, 105, 118).

(13) If the woman escapes, her husband may divorce her for adultery; if her partner escapes, he becomes a *qanly* of the offended husband and is obliged to pay a bloodwite of Rs. 250. A husband may spare the life of his adulterous wife provided that later on he can prove her guilt (AJuDO, pp. 8 f). In case of fornication, the avenger may spare the life of the girl, leaving vengeance or mercy to her own family (*ibid.*). The penalty is the same when

the person raped is a minor or an adult: blood-enmity or bloodwite of Rs. 250 (AJuDO, p. 9).

(14) If the adulteress escapes, she becomes the blood-enemy of her husband as well as of her own family. The same holds for her lover. The offended husband is allowed to kill his wife and spare the adulterer, but not vice versa, without becoming a *qanly*. In case of fornication, if both partners are not killed, they have the strict obligation of marrying or else become outcasts and are banished (AJuDO, pp. 43 f).

(15) If a man is accused of adultery and fails to justify himself by an oath taken together with 40 conjurors, the adulteress may be killed by her husband. If a husband decides to kill his adulterous wife, her lover automatically becomes a blood-enemy. The adulterer can choose to pay a bloodwite of Rs. 60 and a fine of six head of cattle instead. The fine is paid to the district (AJuDO, p. 26). If the father of a girl insists, the man who had intercourse with her must marry her, otherwise he must pay a fine of six oxen and becomes a blood-enemy of the girl's family (AJuDO, p. 26). The penalty for raping a widow is three head of cattle. If the woman attacked is married, the offender becomes a blood-enemy if he fails to justify himself by an oath taken together with 40 conjurors (Cf. AJuDO, p. 26).

(16) The adulteress may be divorced (ADOiZO, p. 548, § 19; Dirr, AGKB, p. 75). If the offended husband makes use of this right, the adulterer must pay a bloodwite and is banished for 20—30 days (*ibid.*).

(17) The fornicators are obliged to marry, otherwise they may be killed by the girl's family. Anyone who rapes a girl, widow, divorcée, or a married woman is obliged to marry her, otherwise he too may be killed (AJuDO, p. 48).

In pre-Russian times it was sufficient if the husband had learned by mere hearsay that his wife had been unfaithful: he could at once inflict the death-blow without further investigation.[27] Although during the Russian occupation the right to kill one's adulterous wife still existed (namely, if the wife had been caught in the act or if she had fled with her lover on being detected, or if she had been found guilty by the people's court), the husband seldom made use of his right. A wife was generally divorced, and as compensation, the offended husband kept all her property.[28] We say that she was "generally" divorced, for, if we go through the various criminalogical reports of the Russian (pre-Soviet) times, we find not a few cases where the right to kill has been actually made use of. To mention but a few of these official reports: "December 28, 1869, a citizen of the aul Orot, of the Province of Avaria, by the name of Gamzat Labazan-ogdy, stabbed his brother to death because Ali (his brother) had committed adultery with Gamzat's wife, whose name is Patimat Mutalilov-kizy."[29] Or again, "December 12, 1869, a native of the aul Arsug ... having caught his wife, Kifi Rodzheb-kizy, in an adulterous union with his co-villager, Ramazan Adzhab-Palay-ogdy, killed her with the help of her own kinsman, Dzhabrank Tseyd-ogdy."[30]

The Lesghians love to repeat the ballad of Nika Bulat. It is a tragic tale indeed, but a tale that clearly conveys the deep conviction of these mountaineers of the heinousness of adultery. Nika Bulat, we must remember, was a righteous

[27] Kovalevskij, *Zakon*, II, pp. 195 f.
[28] Similar changes are noticeable throughout the Caucasus.
[29] "Iz gorskoj kriminalistiki," SSKG, III (1870), p. 19.
[30] *ibid.*

684 man. He loved his mother as every faithful son should. In fact, he loved her
[538] with an exceptionally deep filial love. But alas! How painful it must have
[837] been for him to learn that his mother, whom he so worshipped, had an illicit lover! His heart burst with grief and rage. Nika Bulat at once rushed to the adulterer's home; his eyes flashed with rage as he whipped out his dagger and plunged it into the lover's heart. Nika Bulat then hacked off his head and hands, and took these gory limbs and head to his mother, and staring at her for a moment as if he had gone mad, dropped them at her feet. On seeing her furious son and especially the gruesome sight before her, she burst into tears, but tears that only served to make Nika Bulat's blood boil with rage even still more violently. With one thrust of his dagger, his mother lay dying beside the head and hands she once so wrongfully loved to clasp. But that is not the end of the tragedy. Nika Bulat's sisters were present and witnessed all. They fell down on their knees, weeping bitterly on their mother's breast, as she bled and gasped. But Nika Bulat did not allow his sisters to weep. That same dagger was whipped out once again, and like a flash plunged into the heart of one of his sisters, and then into the heart of the other, thus putting an end to their sobs, sobs that were, in eyes of Nika Bulat, an approval of their mother's crime. For this great act of heroism Nika Bulat was admired by all and proclaimed the head of the village.[31]

[834] This abhorrence of sexual crimes is brought out further by the fact that any accidental touch of the bare hand of a strange woman is considered a violation, and both are regarded as "unclean."[32] Especially in dances all physical contact must be scrupulously avoided, no matter how small and crowded the room may be. Baddeley describes how the dancers curve in and out within a few inches of each other, but never is there even the slightest bodily contact, "the breach of this observance, even inadvertently, leading to many a fatal quarrel. A husband, brother or lover, looking on with jealous eye, would whip out his 'kinjal' at the mere suspicion of a touch..."[33] A further reflexion of this extreme sensitivity is the considerably large number of *adats* which make no distinction between mere contact and actual rape. In the Districts of Hyuraki, Usisha, and Mugn, for example, actual rape, attempted rape, and a mere suspicious touch or approach are all equally punished.[34]

684 838 Homosexuality is punished as severely as voluntary illicit relations between persons of the opposite sex. To mention but a few examples: in Hyuraki District, the two persons caught in the act may be killed on the spot by their relatives, or else, if spared, each must pay a fine of three oxen to the community, and both persons are banished for a year, not to mention other penalties;[35] in

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[31] Cf. Dirr, AGKB, pp. 75 f.

[32] L'vov, "Domašnjaja i semjnaja žizn Dagestanskich gorcev Avarskago plemeni," SSKG, III (1870), p. 21.

[33] Baddeley, *op. cit.*, II, p. 13.

[34] Cf. "Adaty Darginskich Obščestv," SSKG, VII (1873), pp. 65, 91, 105.

[35] "Adaty Darginskich Obščestv," p. 92. To free one's self from a charge of homosexuality 40 conjurors are required just as in the case of murder *(ibid.)*.

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Akusha, Tsudakhar, Mugn, Nikakhya, Hyuraki, Usisha, and Sirgua the penalty for homosexual rape is the same as that for murder.[36]

Bestiality is not punished as severely as other sexual crimes. Generally, the person is merely fined; he is never killed for the act.[37]

If a maiden or a widow becomes pregnant, she may secretly break into the home of her seducer, give birth to the child, and as a result, he must marry her. This practice, however, is not an *adat* but a practice encouraged by the Šâfi'itic school.[38]

The SOUTHERN CAUCASIANS. In ancient Georgia a husband had the right to kill his adulterous wife as well as her lover; a father had the right to kill the accomplice of any of his children.[39] In more recent times, the male partner was generally spared by the Pshavs,[40] Khevsurs,[41] and the Tushi,[42] otherwise the avenger himself would become a blood-enemy. In Svanetia illicit intercourse was not punished with death if the lovers happened to be of the same village.[43] Among the Svans, later on, the avenger of an act of illicit intercourse was obliged to pay half of the usual *tsor* (bloodwite),[44] and this very sum (besides a refund of the *kalym*) had to be paid to him by the family of his adulterous wife,[45] so that to become a blood-enemy in such a case did not involve great inconvenience. In Khevsuria, for example, if the life of the adulteress was spared, she would be subjected to indescribable torture. Her cheeks would be slit, her nose, ears or arms would be amputated and hair cut off.[46] This sort of punishment has not yet completely disappeared, though it has become very rare. Baddeley speaking of his host in Georgia writes: "Our host told us that his own uncle, having served a sentence of imprisonment in Tiflis, came back to find his wife living with another man ... He cut off one of her ears, her nose and her right hand; but that was some time ago."[47] Today the penalty for adultery is not half as severe: generally the wife is divorced and the *kalym* must be refunded to the husband together with half of the usual bloodwite.

[36] "Adaty Darginskich Obščestv," p. 21.

[37] Cf. "Adaty Darginskich Obščestv," pp. 52, 92, 106, 119.

[38] Kovalevskij, *Zakon*, II, p. 168.

[39] Code of King Vakhtang VI, § 42, Karst ed. p. 92 f.

[40] Kovalevskij, *Zakon*, II, p. 94.

[41] Kovalevskij, *op. cit.*, II, p. 120.

[42] *ibid.*

[43] Kovalevskij, *Zakon*, II, p. 94: "Pravilo, po kotoromu preljubodêi i soblazniteli podležali krovnoj mesti, terpêlo u plavov isključenie v tom slučae, kogda vinovnymi javjalis' odnosel'čane — rodstveniki. Mêsto ubijstva v etom slučae zanimala prekraščenie vsjakago obščenija i nerêdko istreblenie ličnoj sobstvennosti." Just why should illicit intercourse be more severely punished if persons of different villages are in question? It would seem that the Svanian rule of local endogamy lessens the guilt; that is, the intercourse takes place between two *possible* mates. Moreover, blood-feuds between relatives are, as a general rule, impossible.

[44] Dirr, AGKB, p. 83.

[45] *ibid.*

[46] Makalatija, "Iz starogo narodnogo byta Plavov," SE, 1938, No. 1, p. 109; Baddeley, *op. cit.*, I, p. 237; Dubrovin, *Istorija*, I, ii, p. 312.

[47] Baddeley, *l. c.*

This relatively mild punishment has been introduced mainly through Christian influence and on account of the dearth of women caused by female infanticide.[48]

The reports regarding the OSSETINE penalties are indeed confusing, until the proper local and temporal distinctions are made. Thus according to an ancient *adat* of the "frontier" Ossetes, as some Russian writers call them, the avenger of adultery would become the blood-enemy of the relatives of the adulterer. Later on a new customary law arose, giving the husband full right to kill the adulterer as well as the adulteress, with impunity.[49] The Ossetes of Tagaursk and Kurtalinsk usually killed the adulterer and threw the unfaithful wife out of the house.[50] The Alaghirs, on the contrary, were more merciful toward the adulterer and less so toward the adulteress. He was obliged to give the offended husband a horse and saddle, and then give him a feast, whereas the woman was mutilated (her nose was cut off) and then sent back to her father. If her husband forgave her, her family had to give him a horse and a gun.[51] In the collection of *adats* of 1841 (§ 41), the adulterer could be killed with impunity if caught *in flagranti*, whereas in the last decades of the nineteenth century Kovalevskij learned that the adulterer might indeed be wounded but not killed.[52] Inspite of these variations, *all* Ossetes have always believed that adultery was a very serious crime.

Formerly even mere suspicion justified the jealous husband to kill his wife and the suspected lover.[53] If he spared her life, he punished her publicly, bound her naked to a donkey and drove her through the village, whipping both the donkey and the miserable culprit, while the children and the girls of the *aul* would throw filth at her and sing jeering songs.[54]

Formerly to accept anything less than blood (that is, bloodwite) was considered a disgrace and even unlawful.[55]

The penalties for fornication were also very severe. The girl was set upon a donkey, her face to the tail and thus publicly driven through the village, jeered and spat upon by her fellow-villagers. And if she gave birth to an illegitimate child, the baby would be killed. If the mother's life was spared, she could marry only a widower,[56] or, of course, her lover.[57] Sometimes the lover was even forced to marry her or at least pay the usual *kalym*.[58]

The TURKS of the Caucasus are also very merciless when it comes to punishing adultery. If a Kumyk or Nogai husband or near relative catches a woman in the act of adultery, he may kill both culprits on the spot. If the

[48] Dirr, *l. c.*
[49] Pfaff's article in SSKG, II, pp. 274 f., cited by Dirr, AGKB, p. 80.
[50] Leontovič, II, p. 41
[51] Leontovič, II, pp. 44, 38.
[52] Kovalevski, *Coutume contemp.*, p. 349, *note* 1.
[53] S. Karginov, "Krovavaja mest' u osetin," SMOMPK, XLIV (1914), No. 3, pp. 204 f.
[54] Dirr, *l. c.*
[55] Karginov, *l. c.*
[56] Baddeley, *op. cit.*, I, p. 237.
[57] A. H. Post, *Grundriß der ethnol. Jurispr.*, II, p. 378.
[58] Dubrovin, *Istorija*, I, i, p. 339.

[1] [usually divorce, refund of bride price, and half of usual bloodwite -- Analyst]
[2] [in Georgia -- Analyst]

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adulterer and the adulteress escape, they both become blood-enemies of the husband and must pay a bloodwite of Rs. 100.[59] 684

In case of fornication, marriage between the two lovers becomes obligatory. The lover may divorce his wife immediately after marriage, but by so doing he incurs the obligation of paying the customary *kebin-khak*.[60] If the girl is too young to marry, the man must wait till she becomes old enough.[61] In case of incest, the regulations set down in the *šarī'a* are followed rather than the *adats*.[62]

Pederasty and sodomy occur very seldom among the North Caucasians and Ossetes, whereas they are rather frequent among the neighbouring Karachai and Taulu.[63] [338]

The KURDS also have the practice of cutting off the adulteress' ears and nose.[64]

§ 2. PROBLEMS AND GENERAL CONCLUSIONS

1. Historical Reconstruction

Despite the many dissimilarities we have noticed in the customary penal laws of the various peoples of North Caucasus, it is quite possible that the differences are merely different *stages* of one and the same *adat*. (1) According to the oldest customary laws, the adulteress had to be punished, and she alone. She was punished if she had been caught in the act, or even if the husband had learned of her infidelity from others. Sometimes mutilation (nose, ears or arms were cut off, hair clipped, cheeks slit, etc.) preceded the execution; sometimes, after thus being mutilated, she was sold into slavery. (2) It seems that later on, at least in some parts of North Caucasus, she might be mutilated, but not killed. If the jealous husband would nevertheless take her life, he would become a blood-enemy of her relatives. (3) Later still, especially, but not exclusively, through Islamic influence, the adulterer too had to be punished. He would have to pay a certain sum to the offended husband, a sum sufficient to reconcile himself with the relatives of his adulterous wife, whom he had slain and thereby become their blood-enemy. The *adats* which insist on the *death* of the adulterer seem to be relatively recent. (4) As a precaution against over-hasty and unjunst action, the husband was obliged to kill both partners or none at all. To slay only the adulteress or only the adulterer was now looked upon as suspicious and even unjust, and therefore the avenger himself became a blood-enemy of the relatives of the partner he happened to kill. The insistence on killing the culprits *in the act* seems also to be a later innovation, a means to check false suspicion and [567]

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[59] "Adaty žitelej kumykskoj ploskosti," SSKG, VI (1872), p. 13; Leontovič, II, p. 205, § 13. See also N. Semenov, "Očerki narodnych obyčaev Kumykov Terskoj Oblasti," *Terskij Sbornik* II (1892), No. 2, Part 2, pp. 75 f.

[60] The *kebin-khak* is generally Rs. 100. Cf. Semenov, *op. cit.*, p. 75.

[61] "Adaty žitelej kumykskoj ploskosti," p. 15, § 10.

[62] "Adaty žitelej kumykskoj ploskosti," p. 13.

[63] Kovalevskij, *Coutume contemp.*, p. 340.

[64] Jankó, "Néprajzi, etc.," Zichy's *Kaukázusi és középázsiai utázásai*, p. 61.

[Sic.. Analyst]

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684 unjust death penalty. (5) Finally, the adulteress was merely divorced; she lost her right to the *kebin*, while the *kalym* had to be returned to the husband. The adulterer was obliged to pay a fine.

Amputation of the adulteress' ears and nose is a punishment found in the *adats* of all Caucasians. It is interesting to note that a Hittite code (about 1350 B. C.) engraved on a stele has been dug up, which expressly legalized such mutilation in case of adultery.[65] This code may be based on a substratum of customary laws which are now preserved in the isolated *auls* of the Caucasus.

2. Motives

The main motives for punishing sexual offenses seem to be: (1) in case of defloration, the girl loses her value and consequently the family suffers a great economic loss;[66] (2) there is a serious danger of a stranger being born into the sacred sanctuary of the home and later treated as a legitimate member and even as head of the family (*supra*, p. 126).

3. Reports regarding Sexual Laxity of the Caucasians

834 In view of such severe penalties as we have described above, we cannot [832] help being suspicious about some of the reports regarding laxity of morals among the mountain tribes of the Caucasus. The Kuban Cherkess are supposed to have formerly been proud of the fact that their wives attracted other men. Every [836] woman had to have a lover to prove her true value.[67] Longworth's report, to mention but another example, contrasts the scrupulousness after marriage with "their unconstrained demeanor before marriage."[68] "The maidens of Circassia are allowed a latitude in their behaviour which is elsewhere unknown; not only do they talk and dance with the other sex, but when they please, they exercise their blandishments to an extent that to a stranger is no less perplexing than [796] agreeable."[69] Then there are the many reports about public religious hetaerism. [764] Interiano claims that at funerals of prominent personages a very strange sort of sacrifice takes place: a girl of 12 to 14 years of age is placed upon a skin of an ox that has just been slaughtered and in the presence of men and women a robust young man of the community must try to deflower her. After several failures, the young man promises to marry her (or makes some other promises), 837 and then the girl usually consents.[70] There are also the reports about sexual 836 hospitality, for example, in the "Relation du Sieur Ferrand médicin du Khan 574 des Tatares, touchant la Crimée, les Tartares-Nogaies et ce qui se passe au serail du dit Khan,"[71] in *Voyage historiques et géographique dans les pays situé entre la Mer Caspienne par Edouard Barbier du Bocage et de Baert*, as well as in the

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[65] H. C. E. Zacharias, *Protohistory*, p. 258.
[66] *Supra*, pp. 126 f.
[67] Dirr, AGKB, pp. 81 f.
[68] Longworth, *A Year among the Circassians*, I, p. 286.
[69] Longworth, *op. cit.*, I, p. 216.
[70] Ladyženskij, FT, p. 183, Dirr's note.
[71] In *Recueil des Voyages au Nord*, Amsterdam, 1718.

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837 936 574 to the general rule. This village is inhabited by a degraded Avarian tribe or, as Baddeley suggests, "perhaps the remnant of an older race absorbed by the latter."[81] But even here, among this "degraded" Avarian tribe, the girl "might only be touched from waist upwards; in Shamyl's time a too-ardent lover was stabbed to death, for a breach of this adat, by his own beloved, and the deed was not only not punished but even greatly applauded."[82]

936 There are also similar conflicting reports regarding the neighbouring mountain tribes of Georgia. Klaproth, for instance, speaking of the Tushi, says, "Le commerce illicite entre les deux sexes est très rare chez eux..."[83] Klaproth's claim is in full accord with the severe penalties for fornication as described by Baddeley: "If a girl was unchaste, she was set upon a donkey, face to tail, and carried through the 'aoul', spat upon and jeered at." He goes on to say that "if a girl had a child, she was driven out of the community and the child killed, unless some charitable person took pity on it. A young man could not marry a girl once seduced by another man, but an old man or widower might."[84] Other reports, however, maintain the very contrary and say that the mountain tribes of Georgia are extremely lax. A few distinctions will, I believe, clarify these contradictions. The Khevsurs[85] and the Pshavs[86] have an institution called *tsatsali*, that is, "brother" or "sister" but actually legal lovers. It is only freedom with non-*tsatsalis* and pregnancy that seems to have been discountenanced by these tribes. As long as the girl restricted her relations to her *tsatsali* and avoided pregnancy she was "chaste." One of the main reasons for the [582] relatively late marriage age among the mountain tribes of Georgia (*supra*, p. 67) is this institution.[87]

4. Relation of Penalties for Sexual Offenses to the Economic and Social Organization of the Caucasian Mountaineers

182 687 All that we have said about the severity of the penal laws of the North Caucasians is in perfect harmony with their general economic and social organization. It is a known fact that lower hunters discountenance sexual liberty more than the higher hunters; the lower agrarians more than the higher; the pastoralists more than the agrarians; the father-right family more than the mother-right.[88] Our North Caucasians have a strongly pastoral and father-right organization.

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[81] Baddeley, *op. cit.*, II, p. 13.

[82] *ibid.* Baddeley's source is Komarov's article "Adaty i sudoproizvodstvo po nim," SSKG, I, p. 57. Dubrovin, *Istorija*, I, i, p. 564 has the incident too, but he fails to mention his source.

[83] Klaproth, *Voyage au Mont Caucase et en Géorgie*, II, p. 72.

[84] Baddeley, *op. cit.*, I, p. 237.

[85] Kovalevskij, "La famille matriarcale au Caucase," *L'Anthropologie*, IV (1893), p. 273.

[86] Makalatija, "Iz starogo narodnogo byta Pšavov," SE, 1938, No. 1, p. 98.

[87] Since the *tsatsali* in Pshavia are always chosen from among relatives and marriage is possible only between non-relatives, marriage would mean that the two would have to separate and love another person, a fact that makes them reluctant to marry. In fact, they sometimes do not marry at all. For a detailed exposition of the institution, see Makalatija, *op. cit.*, pp. 98—102.

[88] H. Günther, *Formen und Urgeschichte der Ehe*, p. 90.

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IV. CONCLUSION

Chapter XIV

Conclusion

§ 1. MARRIAGE AND THE FAMILY OF THE CAUCASIANS IN THE LIGHT OF HISTORY

1. Russian (Soviet and Pre-Soviet) Influence

That the Russian military, political, and cultural influence has greatly affected, changed and unified, the marriage and family customs of the various peoples of the Caucasus cannot be denied. We need but recall some of the many facts we have pointed out in our comparative study.

(1) The Russians, we have seen, severely prosecute *polygyny* (*supra*, p. 39) and not without success. The relative scarcity of polygamous unions throughout North Caucasus and the neighbourhood, regardless of how ethnically different the tribes may be, must be attributed, at least in part, to Russian legislation.

(2) In recent times both mates have begun to enjoy greater *freedom of choice*, (*supra*, p. 76), thanks to the Russian insistance on freedom in mating as a *conditio sine qua non* for a legally valid marriage.

(3) We have also observed how rapidly *bride purchase* was disappearing or assuming an entirely different significance throughout the Caucasus, again, at least in part, owing to Russian legislation, industrialization, and education (*supra*, pp. 83, 87, 90).

(4) *Bride price, bloodwite*, etc. were formerly measured in cows, horses, sheep, and oxen, but now they are measured in money : not in live stock but in Russian rubles ! (*Supra*, pp. 82—89, 95, 168—179).

(5) The Russian opposition to *bride capture* has helped to make the practice become rare (*supra*, pp. 97 f). It was Russian positive law gaining ascendency over the *patria potestas* and its insistance on freedom of choice that encouraged and even defended elopement (*supra*, p. 98).

(6) The general disappearance of slavery and the associated sociological consequences, e. g., *the marriage impediments*,

(7) the *less severe penalties for sex crimes* which are gradually being adopted by all tribes of Caucasia (*supra*, pp. 175, 180).

(8) and the improvement in the *status of the female sex*, all must be reckoned among the effects of Russian and Soviet influence.